IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl. Misc. No. 68878-M of 2006

DATE OF DECISION : 29.01.2007

Anup Chaturvedi

.... PETITIONER

Versus

State of Punjab

..... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

Present: Mr. Vishal Sharma, Advocate,
for the petitioner.

* * *

Petitioner Anup Chaturvedi, who was the factory manager of the manufacturing company, has filed this petition under Section 482 of the Code of Criminal Procedure for setting aside the order dated 7.8.2006, passed by Additional Sessions Judge (Adhoc) Fast Track Court, Bathinda, whereby on a revision filed by the State of Punjab, the order dated 12.11.2005, passed by Sub Divisional Judicial Magistrate, Phul, discharging the accused has been set aside.

2. I have heard counsel for the petitioner and gone through the orders dated 12.11.2005 and 7.8.2006, passed by the trial court and the revisional court, respectively.

3. In this case, a sample of insecticide was drawn by the Insecticide Inspector on 12.8.1997 from the business premises of Garg Pesticides, Rampura Phul. The insecticide was manufactured by M/s Vallabh Pesticides Ltd. Vithal Udyognagar. On analysis, the said sample was found to be mis-branded. A show cause notice along with copy of analyst report was sent to the dealer as well as to the manufacturer, as per provisions of Section 24 (2) of the Insecticides Act, 1968. No request for re-

analysis was made by them. Subsequently, the complaint was filed. At the time of framing of charge, the trial court discharged the accused after observing that sanction of the competent authority was not given on proper form and in the complaint, it has not been properly stated what role was played by the responsible officer of the manufacturing company, who was being prosecuted. On revision, filed by the State of Punjab, the said order of discharge was set aside by the revisional court, while observing as under :-

> "I have considered the submission and am unable to agree with the same. Similar controversy was involved in a case decided by the Hon'ble Punjab and Haryana High Court in ruling M/s Ajay Ferti's case (supra) after making reference to several authorities, the Hon'ble Supreme Court has held that there is no irregularity in grant of sanction to prosecute when it is stated that manufacturer is being prosecuted through some particular person. Reliance in this respect was placed upon decision of the Hon'ble Supreme Court of India in ruling reported as Kalpanth Rai's case (supra), wherein it was held that error in sanction for prosecution does not vitiate the trial unless the accused is able to show that irregularity in the sanction has occasion the failure of justice. It is argued by the ld. Addl. P.P. that in the instant case the accused have failed to show what injustice have been done to them due to irregularity in the sanction pointed out by them. Ld. Addl. P.P has also placed reliance upon another ruling of Hon'ble Supreme Court of India reported as U.P. Pollution Control Board's case (supra), wherein it was held that it is the duty of the manufacturing company or distributing company as the case may be to come and to point out to his its responsible officer for the quality control in the manufacturing unit. It is, therefore, argued by the Ld. Addl. P.P that due to the reason that in the complaint it has not specifically been stated that what act was played by Mithu

> Ram or D.S. Bhullar or Anup Chaturvedi, the limited companies cannot be absolved their responsibilities to face criminal action before the court. It is, therefore, argued by the Ld. Addl. P.P that ld. SDJM has fallen in error while discharging all the accused including the dealer from whom the sample was taken and also including the distributor Marketing agent and manufacturing company of the pesticides. It is, accordingly, argued by the Ld. Addl. P.P and I am inclined to agree with these submissions that the order, under revision, is not in accordance with law and is liable to be set-aside. Revision is accordingly accepted. Order under revision is set-aside."

4. Counsel for the petitioner contends that the revisional court has illegally set aside the order for discharge, as in the complaint, there is no averment that the petitioner is responsible for the day to day affairs of the company and the offence has been committed in connivance or knowledge of the petitioner. He further contends that even proper sanction under Section 31 (1) of the Insecticides Act was not obtained and from the averments made in the complaint, no alleged offence is made out.

5. I do not find any substance in either of the contentions raised by counsel for the petitioner. The revisional court has rightly set aside the impugned order. The petitioner has raised disputed question of facts, which will be established during the trial on the basis of evidence. No ground for interference in the impugned order is made out.

6. Dismissed.

January 29, 2007 **(SATISH KUMAR MITTAL)**
ndj **JUDGE**